

PROFORMA FOR THIRD PARTY HARASSMENT CONSULTATION RESPONSES

The consultation closes on 07 August 2012. Please let us have your response by that date.

When responding, it would be helpful if you could provide the following information.

Please fill in your name and address, or that of your organisation if relevant. You may withhold this information if you wish, but we will be unable to add your details to our database for future consultation exercises.

Contact details:

Please supply details of who has completed this response.

Response completed by (name):

Position in organisation (if appropriate):

Name of organisation (if appropriate):

Address:

Contact phone number:

Contact e-mail address:

Date:

Consultation confidentiality information

The information you send us may be passed to colleagues within the Home Office, the government or related agencies.

Information provided in response to this consultation, including personal information, may be subject to publication or disclosure in accordance with the access to information regimes (these are primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want other information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory code of practice with which public authorities must comply and which deals, among other things, with obligations of confidence.

In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances.

I would like my response to remain confidential (please tick if appropriate):

Please say why

An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the department.

The Department will process your personal data in accordance with the DPA and in the majority of circumstances this will mean that your personal data will not be disclosed to third parties.

You or your organisation

Q(i) In what capacity are you responding?

As an individual (if so, please go to Q1 in the main comments section)

On behalf of an organisation (if so, please go to Q(ii) below)

Other (please specify)

Q(ii) Is your organisation

(please tick the box that applies to your organisation)

A local authority (including health authority) or local authority organisation

An equality lobby group or body

A statutory body

An organisation representing employers

A professional organisation

A trade union or staff association

A legal organisation

Other (please tick box and specify)

Q(iii) If responding as an employer, how many people do you employ? (select one)

Between 1 and 5 employees

Between 6 and 14 employees

Between 15 and 49 employees

Between 50 and 249 employees

250 employees or more

Q(iv) **If responding as an employer please indicate which sector best describes you (select one):**

Legal services

Construction and/or building design

Communications

Wholesale and retail trade

Leisure – hotels, restaurants, pubs

Leisure – cinemas, theatres, museums

Leisure – other

Distribution/transport

Financial and/or business services

Electricity, gas and water supply

Advice and/or information services

Public administration

Education/training

Health and social work

Charity/voluntary work

Other (please tick box and specify)

Note:

In addition to the completed proforma, you can also send other supporting information if you so wish.

Completed forms should be e-mailed to the following address:-

thirdpartyharassment@geo.gsi.gov.uk

If you are posting the form please send to:-

Third Party Harassment Consultation Responses
Government Equalities Office
Equality Law and Better Regulation Unit
Home Office
3rd Floor Fry, North East Quarter
2 Marsham Street
London SW1P 4DF

Thank you for completing this response form.

Section A: What are your experiences of third party harassment¹

Question 1a: (Question for employees)

Have you experienced conduct that you consider would count as third party harassment at work?

Yes

No

Don't know

Prefer not to say

If you have ticked yes, it would be helpful to understand more about what form of conduct you experienced. Please use the space below to provide further details and go to Question 1b

N/A

Question 1b: (Question for employees)

You have stated that you have experienced conduct that you consider would count as third party harassment at work. Did you go on to make a claim to an employment tribunal against your employer?

Yes

No

Prefer not to say

If yes, if you are happy to do so, please use the space below to outline what happened to your claim once you lodged it with the employment tribunal

N/A

If no, if you are happy to do so, please use the space below to outline your reason for deciding not to bring a claim against your employer

¹ See Annex 1 for the definition of 'third party harassment' in the 2010 Act

Question 2: (Question for employers)

Has an employee ever made a claim against you because they said they had experienced conduct which would count as third party harassment at work?

Yes

No

Prefer not to say

If yes, if you are happy to do so, please say what happened with the claim

N/A

Question 3a: (Question for those advising or acting for employers)

Have you ever advised or acted for an employer who has had an allegation of third party harassment brought against it?

Yes

No

Prefer not to say

If yes, if you are happy to do so, please give details

N/A

Question 3b: (Question for those advising or acting for employees)

Have you ever advised or acted for someone claiming to have been the subject of conduct which would count as third party harassment?

Yes

No

Prefer not to say

If yes, if you are happy to do so, please give details

N/A

Section B: What might be the impact of repealing this provision? (for all respondents)

Question 4: Do you agree or disagree that the third party harassment provision should be repealed?

Agree

Disagree

Neither agree nor disagree

Don't know

Please use the space below to explain your answer

NAT (National AIDS Trust) is the UK's leading charity dedicated to transforming society's response to HIV. We provide fresh thinking, expertise and practical resources. We champion the rights of people living with HIV and campaign for change. NAT supports the consultation responses of the Disability Charities Consortium and the Equality and Diversity Forum (EDF). We would particularly highlight the legal reasons for not removing this protection outlined in detail in the EDF response.

NAT does not agree that the third party harassment provision should be repealed. A recent NAT survey revealed that 69% of people feel there is still a great deal of stigma in the UK around HIV and one in three people living with HIV report having experienced discrimination. For this reason we actively supported the inclusion of the third party harassment provision in the Equality Act 2010. We were therefore very disappointed by the recent Government proposal to repeal this provision, particularly so soon after its enactment when there has been very little time to assess its impact. We acknowledge that there has only been one known case involving this provision. However, the fact that the provision is now in place may in part be responsible for this. Employers may well now be taking steps to ensure that staff are not victims of third party harassment. In addition, as this is a fairly new provision, employees may not as yet be fully aware of their rights, and with time we may see further cases come to tribunal. There are several examples of when this protection may be invaluable for people living with HIV; for example teachers or healthcare workers who are openly living with HIV may be subject to harassment from parents or patients who are ignorant about that the reality of living with HIV.

We note that the consultation document introduction highlights that "most businesses do everything they can to ensure that their employees can work in an environment free from harassment, whatever its source." The current legislation goes further than this and makes clear that all businesses must take steps to prevent employees experiencing third party harassment, ensuring that where some business do not prioritise this, their employees have some level of protection. We believe it is vital that this protection is maintained and have concerns that repealing the provision will send out the message that the Government do not think this is important. We also believe that it will cause confusion as many businesses will

have gradually become aware of their new responsibilities under the Act - to then change these may result in uncertainty about which aspects of the Act are in force and which are not.

We are also aware that the Government has put an increasing focus on disabled people returning to the workplace. In the right circumstances this can be extremely beneficial for disabled people, including those living with HIV (HIV is a disability from the point of diagnosis). However, people living with HIV are often concerned about stigma and discrimination in the workplace. Repealing this provision at this time sends out the wrong message to disabled people about the protection available to them in the workplace. Expecting employees to have to use the Prevention from Harassment Act 1997 and to sue in the County Court, as they would be forced to do if this provision were revoked, places additional barriers to disabled people who experience third party harassment seeking redress, when instead the Government should be seeking to remove these obstacles.

Question 5: If this provision were removed, is there any other action that the Government should take to address third party harassment at work?

Yes

No

Don't know

Please use the space below to provide further details

NAT would strongly recommend retaining the current provision. However, if the provision were removed it would be important for the Government to send out a clear message that disabled people must be protected from third party harassment at work. This could include the development of guidance for employers on third party harassment to encourage best practice. This could, as proposed by the DCC, be developed in partnership with the EHRC and third sector organisations.

Question 6a: Do you think that there are further costs and benefits to repealing the third party harassment provision which have not already been included in the impact assessment?

- Yes, I think there are further costs to include
- Yes, I think there are further benefits to include
- No, I think all costs and benefits have been included
- Don't know

If yes to further costs, please use the space below to provide detail

The impact assessment fails to consider the cost of employees who experience this type of discrimination and feel unable to remain in employment and may remain unemployed for long periods of time. We would also highlight the fact that as set out in the impact assessment, the most likely cost of retaining the current provision is £0 and so we would suggest this argues strongly for retaining the law as it stands, sending out the message that third party harassment is unacceptable.

If yes to further benefits, please use the space below to provide detail

Question 6b: Please use the space below to provide any comments you have on the assumptions, approach or estimates we have used

Please use the space below to provide detail

Question 7: How many third party harassment cases would you expect to be brought each year if the third party harassment provisions were retained?

Number of cases

Please use the space below to explain your answer

It is difficult to estimate the number - however we would highlight the point above that the number of cases brought should not be seen as a measure of how effective the provision is. In fact, a low number of cases can be taken as evidence of the effectiveness of the measure as employers are taking proactive steps to stop third party harassment occurring and stepping in quickly and appropriately when incidents do occur so that employees have no need to take their employer to tribunal. We have also provide examples in our response to question four of when someone living with HIV might be subject to third party harassment and we believe that, unfortunately, it is very possible that cases may be brought in the future if this important protection remains in place.

Question 8: Does the consideration of the impact on equality in the impact assessment properly assess the implications for people with each of the protected characteristics?

Yes

No

If no, please use the space below to explain your answer

The Equality Impact assessment does not look specifically at the particular barriers faced by disabled people and the stigma and discrimination they face. The Office of Disability Issues published a report on public perceptions of disabled people which found that 79% of people thought there was some prejudice towards disabled people and notes that "many respondents expressed views that suggest they see disabled people as less capable than

non disabled people." ² Although it notes that there are other means of legal protection when third party harassment occurs, it does not look in detail at how much more difficult it would be to seek redress through these alternative protections and whether this would discourage people from seeking justice.

NAT would welcome the opportunity to discuss the issues we raise in our consultation response in more detail. - see contact details above.

NAT
August 2012

Thank you for completing this response form.

Responses will be used to help the Government assess your views on its proposal to repeal the employer liability for third party harassment of their employees provision – section 40(2)-(4) of the Equality Act 2010.

² Staniland, L. (2010) *Public Perceptions of Disabled People, Evidence from the British Social Attitudes Survey 2009*, Office for Disability Issues.